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Supreme Court, U.S.
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In The

Supreme Court of the United States

ARTHUR REYES FONTILEA,

Petitioner,

v.

MICHAEL B. MUKASEY,
U.S. ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether pre-trial detention that has been credited to an alien's sentence should be counted as part of that aliens "term of imprisonment" in determining his or her eligibility for relief under section 212(c) of the Immigration and Nationality Act (hereinafter "INA" or "Act"), 8 U.S.C. § 1182(c)?

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OPINION BELOW

The decision of the Ninth Circuit Court of Appeals (hereinafter "Ninth Circuit") (Pet. App. 1-3) is not published in the *Federal Reporter* but is reprinted in 275 Fed.Appx. 642. The decisions of the Board of Immigration Appeals (hereinafter "BIA" or "Board") (Pet. App. 4-7, 18-20) and the decisions of the Immigration Judge (Pet. App. 8-17, 21-26) are unreported.

JURISDICTION

The Ninth Circuit filed its decision on April 23, 2008, and entered an order denying Petitioner's petition for rehearing en banc on July 3, 2008. The Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Ninth Circuit's decision on a writ of certiorari.

STATUTORY PROVISION INVOLVED

Former section 212(c) of the Act, 8 U.S.C. § 1182(c), provided:

> "Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) of this section

(other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 1181(b) of this title. The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years."[1]

STATEMENT

A. STATUTORY BACKGROUND

Section 212 of the Act of 1952, 8 U.S.C. § 1182(c), which replaced and roughly paralleled section 3 of the 1917 Act, excluded from the United States several classes of aliens, including those convicted of offenses involving moral turpitude or the illicit traffic in narcotics. *See* 66 Stat. 182-187. As with the prior law,

[1] As discussed below, effective April 1, 1997, the Illegal Immigration Reform and Immigrant Responsibility Act (hereinafter "IIRIRA") eliminated relief under section 212(c) of the Act, 8 U.S.C. § 1182(c), entirely, replacing it with cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a). Initially, both the federal and immigration courts interpreted this legislation as eliminating relief under section 212(c) of the Act, 8 U.S.C. § 1182(c), retroactively as to criminal convictions predating the Congressional action. However, in 2001 the Court held that the abolition of relief under section 212(c) of the Act, 8 U.S.C. § 1182(c), could not be applied retroactively. *INS v. St. Cyr*, 533 U.S. 289 (2001).

this section was subject to a provision granting the Attorney General broad discretion to admit excludable aliens. *See id.*, at 187. That provision stated:

> "Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General. . . ."

The statute, on its face, applies only in exclusion proceedings. However, the provision has been uniformly extended to apply to deportation proceedings as well. *See Francis v. INS,* 532 F.2d 268, 271-73 (2nd Cir. 1976); *Katsis v. INS,* 997 F.2d 1067, 1070 (3rd Cir. 1993); *Tapia-Acuna v. INS,* 640 F.2d 223, 224-25 (9th Cir. 1981); *Matter of Silva,* 16 I&N Dec. 26, 30 (BIA 1976).

Three statutes subsequently enacted significantly reduced the size of the class of aliens eligible for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c). In 1990, Congress passed the Immigration Act of 1990 (hereinafter "IMMACT") which among other things, amended section 212(c) of the Act, 8 U.S.C. § 1182(c) to preclude from discretionary relief anyone convicted of an aggravated felony who had "served a term of imprisonment of at least five years." *See* section 511, 104 Stat. 5052 (amending section 212(c) of the Act, 8 U.S.C. § 1182(c)).

In 1996, in section 440(d) of Antiterrorism an Effective Death Penalty Act of 1996, (hereinafter "AEDPA"), Congress identified a broad set of offenses for which convictions would preclude such relief. *See* Pub. L. No. 104-132, 110 Stat. 1214 (amending section 212(c) of the Act, 8 U.S.C. § 1182(c)). In *Matter of Soriano*, 21 I&N Dec. 516 (A.G. 1997), the Board found that AEDPA's amendments eliminating § 212(c) relief for certain criminal aliens were fully retroactive. However, subsequently the majority of courts concluded that section 440(d) of the AEDPA could not be applied to deportation cases pending on the date AEDPA became law. *See Wallace v. Reno*, 194 F.3d 279 (1st Cir. 1999); *Henderson v. INS*, 157 F.3d 106 (2nd Cir. 1998); *Sandoval v. INS*, 166 F.3d 225 (3rd Cir. 1999); *Pak v. Reno*, 196 F.3d 666 (6th Cir. 1999); *Magana-Pizano v. INS*, 200 F.3d 603 (9th Cir. 1999); *Mayers v. U.S. Dep't of INS*, 175 F.3d 1289 (11th Cir. 1999).

Finally, that same year, Congress passed IIRIRA. That statute, *inter alia*, repealed section 212(c) of the Act, 8 U.S.C. § 1182(c), and replaced it with a new section that gives the Attorney General the authority to cancel removal for a narrow class of inadmissible or deportable aliens. *See* § 304(b), 110 Stat. 3009-597 (repealing section 212(c) of the Act, 8 U.S.C. § 1182(c)) and 3009-594 (creating section 240A(a) of the Act, 8 U.S.C. § 1229b(a)). In 2001, however, the Supreme Court decided that application of the IIRIRA's repeal of section 212(c) of the Act, 8 U.S.C. § 1182(c), as well as the provision of the AEDPA, to aliens who pleaded

guilty prior to their enactment was impermissibly retroactive. *INS v. St. Cyr, supra.*

B. FACTS, ADMINISTRATIVE ACTION AND PROCEEDINGS BELOW

Petitioner is a native and citizen of the Philippines who admitted to the United States as an immigrant at or near Los Angeles, California on or about July 5, 1986. Pet. App. 27-30.

On or about February 10, 1992, Petitioner was convicted in the Superior Court of California, County of Los Angeles, of the offense of attempted murder, committed on or about September 24, 1990, in violation of sections 664/187(a) of the California Penal Code. For this offense Petitioner was sentenced to confinement for a period of ten years. Petitioner was detained for 546 days before his guilty plea and conviction. Subsequently, the Bureau of Prison credited Petitioner with his pre-trial detention and he served an additional 1,331 days.[2] Pet. App. 32-38.

On or about July 19, 1995, the former Immigration and Naturalization Service[3] (hereinafter "INS")

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[2] As discussed above, neither section 440(d) of AEDPA, nor section 304(b) of IIRIRA can retroactively bar Petitioner's eligibility for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c), because he committed the underlying acts that led to his conviction prior to their effective dates.

[3] On March 1, 2003, the INS ceased to exist as an agency within the Department of Justice and its enforcement functions were transferred to the Department of Homeland Security

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initiated deportation proceedings against Petitioner with an Order to Cause (hereinafter "OSC"), alleging that Petitioner was subject to deportation under former section 241(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1251(a)(2)(A)(iii), as an alien convicted of an aggravated felony as defined in section 101(a)(43) of the Act, 8 U.S.C. § 1101(a)(43). Pet. App. 27-30. At a subsequent hearing, Petitioner admitted the allegations set forth in the OSC, conceded removability and applied for a waiver of deportability under former section 212(c) of the Act, 8 U.S.C. § 1182(c). On or about May 15, 1997, the Immigration Judge denied Petitioner's waiver; finding that the AEDPA barred his waiver and ordering him deported from the United States to the Philippines. Pet. App. 21-26.

On or about June 13, 1997, Petitioner filed an administrative appeal with the Board. On or about March 26, 2001, in light of *Magana-Pizano, supra,* the Board remanded Petitioner's case to the Immigration Judge for further proceedings consistent with its opinion. Pet. App. 18-20.

On or about July 23, 2002, the Immigration Judge granted Petitioner's waiver of deportability under former section 212(c) of the Act, 8 U.S.C. § 1182(c); finding Petitioner statutorily eligible for such waiver and finding that any arguments made by INS regarding whether Petitioner had "served a term

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(hereinafter "DHS") under section 441 and 471 of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

of imprisonment of at least five years" were barred by the principles of *res judicata*. Pet. App. 8-17.

On or about August 20, 2002, INS filed an administrative appeal with the Board. On or about June 14, 2004, the Board sustained the appeal; finding that Petitioner had served more than five years imprisonment for his conviction (because his pre-conviction imprisonment was considered time served for purposes of calculating whether he had served at least five years), vacating the decision of the Immigration Judge, and ordering Petitioner deported from the United States to the Philippines. Pet. App. 4-7.

On or about July 13, 2004, Petitioner filed a notice of petition for review with the Ninth Circuit. On or about April 23, 2008, the Ninth Circuit denied Petitioner's petition for review; finding that Petitioner's credit for time spent in custody must be considered as confined as a result of his conviction and as a result, finding that Petitioner was ineligible for a waiver of deportability under former section 212(c) of the Act, 8 U.S.C. § 1182, because he had "served a term of imprisonment of at least five years." Pet. App. 1-3. On or about July 3, 2008, Petitioner's petition for rehearing en banc was denied. Pet. App. 31.

REASON FOR GRANTING THE PETITION

In the present case, the Ninth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court. Because of the harsh consequences attached to deportation and/or removal from the United States, the Ninth Circuit's decision is the source of terrible injustice not only for criminal aliens, but for their innocent families, friends, employers, and communities as well. For these reasons, it is critical that the Court provide some guidance on the issue at hand.[4]

A. THE CREDIT PETITIONER RECEIVED FOR TIME SPENT IN PRE-TRIAL DETENTION SHOULD NOT HAVE COUNTED AS PART OF HIS "TERM OF IMPRISONMENT" IN DETERMINING HIS ELIGIBILITY FOR RELIEF UNDER SECTION 212(c) OF THE ACT, 8 U.S.C. § 1182(c).

In the present case, the critical question is whether Petitioner served a "term of imprisonment" of five years. Answering that question in the affirmative, the Ninth Circuit, relying on its decision in *Arreguin-Moreno v. Mukasey*, 511 F.3d 1229, 1232 (9th Cir. 2008), determined that the credit Petitioner received for time spent in pre-trial detention counted

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[4] At this time, only two Courts of Appeals have specifically addressed the question presented in this case. *See Moreno-Cebrero v. Gonzales*, 485 F.3d 395 (7th Cir. 2007); *Spina v. Department of Homeland Sec.*, 470 F.3d 116 (2nd Cir. 2006).

as part of his "term of imprisonment" in determining his eligibility for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c). Pet. App. 1-3. However, the Ninth Circuit's reliance on *Arreguin-Moreno* was misplaced, as the facts in that case are distinguishable from the facts in the present case. In *Arreguin-Moreno,* the alien pleaded guilty to misprision of a felony in violation of 18 U.S.C. § 4 and was sentenced by the federal district court to 21 months imprisonment and 12 months supervised release in conformance with 18 U.S.C. § 3585. *Id.* at 1231-1232. In concluding that the alien's pre-trial detention that was later credited as time served as part of the sentence imposed counted as confinement as a result of a conviction within the meaning of section 101(f)(7) of the Act, 8 U.S.C. § 1101(f)(7), the Ninth Circuit emphasized the alien's sentence in conformance with 18 U.S.C. § 3585. *Id.* at 1232. On the other hand, Petitioner, unlike the alien in *Arreguin-Moreno,* was convicted of attempted murder in violation of section 664/187(a) of the California Penal Code and sentenced by the state court to state prison administered by the California Department of Corrections. Pet. App. 32-38. Because Petitioner was convicted in state court, 18 U.S.C. § 3585 is not applicable. Moreover, section 101(f)(7) of the Act, 8 U.S.C. § 1101(f)(7), which the Ninth Circuit considered in *Arreguin-Moreno,* and section 212(c) of the Act, 8 U.S.C. § 1182(c), which is at the heart of the present case, contain unique and distinct terms with unique and distinct meanings. As such, this Court's decision in *Arreguin-Moreno* provides little, if any, guidance on the issue at hand.

Further, the Ninth Circuit's decision ignores the plain language of section 212(c) of the Act, 8 U.S.C. § 1182(c). While neither section 212(c) of the Act, 8 U.S.C. § 1182(c), nor the definitional section of the Act expressly state whether pre-trial detention constitutes part of the "term of imprisonment" served for a conviction, the Board itself has held that the "plain language of section 212(c) of the Act, as amended, now bars such relief to any alien who has been convicted of an aggravated felony or felonies and who 'has served,' *not merely been sentenced to*, a term of imprisonment of at least 5 years for his aggravated felony or felonies." *Matter of Ramirez-Somera*, 20 I&N Dec. 564, 566 (BIA 1992) (emphasis added). Further, the ordinary usage of the phrase "term of imprisonment" refers to time actually spent in prison for a particular offense and presumably could not begin prior to a conviction.[5] *See Gomez-Lopez v. Ashcroft,*

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[5] Under section 2900(a) of the California Penal Code, "[t]he term of imprisonment fixed by the judgment in a criminal action *commences to run only upon the actual delivery of the defendant into the custody of the Director of Corrections at the place designated by the Director of Corrections as a place for the reception of persons convicted of felonies.*" (Emphasis added). In the present case, Petitioner was delivered to one of the prison facilities on September 8, 1992 and was released (after serving 4 years and 29 days) from prison on April 30, 1996. Pet. App. 38. Further, under section 2900.5(c), a "term of imprisonment" includes "any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and

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393 F.3d 882, 886 (9th Cir. 2004) (the requirement that the confinement be as a result of a conviction precludes counting any time a person may have spent in pre-trial detention).

Had Congress intended to include any period of detention, pre-trial and post-trial, it could have explicitly stated as much, but it did not. *See Williams v. Taylor,* 529 U.S. 420, 431 (2000) (the Court will give the words of a statute their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import). Therefore, the statute, as written and amended, clearly refers to time served after a conviction and nothing else.

Finally, the Ninth Circuit's decision also failed to consider the essential differences between pre-trial detention and post-trial detention. As the Court noted in *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *See also Ingraham v. Wright,* 430 U.S. 651, 671-672 n. 40, 674 (1977); *Kennedy v.*

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parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency." Notably, a "term of imprisonment" does not specifically include any time credited under section 2900.5(a) of the California Penal Code. Finally, under sections 2931 and 2933 of the California Penal Code, a prisoner can earn sentence credits or reductions for reasons unrelated to time spent in custody, for example, good behavior.

Mendoza-Martinez, 372 U.S. 144, 165-167, 186 (1963); *Wong Wing v. United States*, 163 U.S. 228, 237 (1896); *U.S. v. Morales-Alejo*, 193 F.3d 1102, 1105 (9th Cir. 1999) (Congress uses the terms "imprisonment" and "detention" very differently in federal criminal statutes); *Redman v. County of San Diego*, 942 F.2d 1435, 1440-1441 (9th Cir. 1991) (en banc) (pre-trial detainees have substantive due process rights against restriction that amount to punishment). Accordingly, because a person lawfully committed to pre-trial detention has not been adjudged guilty and because a pre-trial detainee cannot be punished prior to an adjudication of guilt, Petitioner's time spent in pre-trial detention should not have counted, and cannot count, as part of his "term of imprisonment" in determining his eligibility for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c).

B. THE BOARD'S INTERPRETATION OF SECTION 212(c) OF THE ACT, 8 U.S.C. § 1182(c), AND THE NINTH CIRCUIT'S AFFIRMANCE, IS IN CONFLICT WITH, AND ULTRA VIRES, TO THE ACT.

An agency's interpretation or application of a statute is a question of law that courts review de novo. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 424 (1999); *Singh v. Gonzalez*, 451 F.3d 400, 403 (6th Cir. 2006); *Negrete-Rodriguez v. Mukasey*, 518 F.3d 497, 501 (7th Cir. 2008); *Halaim v. INS*, 358 F.3d 1128, 1131 (9th Cir. 2004); *Sarmiento Cisneros v. U.S. Att'y Gen.*, 381 F.3d 1277, 1279-1280 (11th Cir. 2004). In

reviewing an agency's statutory construction, courts must reject those constructions that are contrary to clear congressional intent or that frustrate the policy that Congress sought to implement. *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 n. 9 (1984); *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 32 (1981); *Morton v. Ruiz*, 415 U.S. 199, 237 (1974); *see also Natural Res. Def. Council, Inc. v. EPA*, 966 F.2d 1292, 1297 (9th Cir. 1992) (on questions of statutory construction, courts must carry out the unambiguously expressed intent of Congress).

In *Chevron, supra,* the Supreme Court set forth a two-part test for judicial review of administrative agency interpretations of federal law. Under that test, the reviewing court must consider first "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. "If Congress has done so, the inquiry is at an end; [this Court] 'must give effect to the unambiguously expressed intent of Congress.'" *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) (quoting *Chevron*, 467 U.S. at 843). In making that assessment, the reviewing court not only looks at the precise statutory section in question, but also analyzes the provision in the context of the governing statute as a whole, presuming congressional intent to create a "symmetrical and coherent regulatory scheme." *Id.* at 133 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995)). Finally, the reviewing court "must be guided to a degree by common sense as to the manner in

which Congress is likely to delegate [such an important] policy decision. . . ." *Id.* If, after conducting such an analysis, the reviewing court concludes that Congress has not addressed the issue, it "must respect the agency's construction of the statute so long as it is permissible." *Id.* at 132 (citing *INS v. Aguirre-Aguirre,* 526 U.S. at 424); *Auer v. Robbins,* 519 U.S. 452, 457 (1997)).

In the present case, the key question is whether Congress directly addressed the issue of whether pre-trial detention that has been credited to an alien's sentence should be counted as part of that alien's "term of imprisonment" in determining his or her eligibility for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c), or if Congress left a statutory gap for the agency to fill. However, a plain reading of the statute indicates that there are no statutory gaps or ambiguities and that Congress has unambiguously prohibited including time spent in pre-trial detention as part of the "term of imprisonment" in determining eligibility for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c). As discussed above, the ordinary usage of the phrase "term of imprisonment" refers to time actually spent in prison for a particular offense and presumably could not begin prior to a conviction. *See Gomez-Lopez v. Ashcroft,* 393 F.3d at 886 (the requirement that the confinement be as a result of a conviction precludes counting any time a person may have spent in pre-trial detention).

Accordingly, because the intent of Congress is clear, the Board's interpretation of section 212(c), 8

U.S.C. § 1182(c), and the Ninth Circuit's affirmance, is in conflict with, and ultra vires, to the Act. This decision to impose their own construction of the statute frustrates the clear intent of Congress in enacting section 212(c) of the Act, 8 U.S.C. § 1182(c); thereby diminishing the procedural and constitutional safeguards afforded to those aliens in deportation and/or removal proceedings.

C. INCLUDING TIME SPENT IN PRE-TRIAL DETENTION AS PART OF THE "TERM OF IMPRISONMENT" IN DETERMINING ELIGIBILITY FOR RELIEF UNDER SECTION 212(c) OF THE ACT, 8 U.S.C. § 1182(c), VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FIFTH AMENDMENT.

It is well settled that the Due Process Clause of the Fifth Amendment applies to aliens in removal proceedings. *See Reno v. Flores,* 507 U.S. 292, 305-07 (1993); *Cabrera-Perez v. Gonzales,* 456 F.3d 109, 115 (3rd Cir. 2006); *Huicochea-Gomez v. INS,* 237 F.3d 696, 699 (6th Cir. 2001); *Arreola-Arreola v. Ashcroft,* 383 F.3d 956, 962 (9th Cir. 2004); *U.S. v. Nicholas-Armenta,* 763 F.2d 1089, 1090 (9th Cir. 1985). The Due Process Clause of the Fifth Amendment, which is applicable to the federal government, incorporates the Fourteenth Amendment's right to equal protection. *See Bolling v. Sharpe,* 347 U.S. 497 (1954); *U.S. v. Lopez-Flores*, 63 F.3d 1468 (9th Cir. 1995). The core principal of equal protection is that "[t]he sovereign may not draw distinctions between individuals based

solely on differences that are irrelevant to legitimate governmental objectives." *Lehr v. Robertson,* 463 U.S. 248, 265 (1983). While equal protection does not forbid legislative classifications, it requires that such classifications be rationally related to a legitimate government interest. *See Romer v. Evans,* 517 U.S. 620, 631 (1996); *Heller v. Doe,* 509 U.S. 312, 320 (1993); *Ram v. INS,* 243 F.3d 510, 517 (9th Cir. 2001) (legislative classifications in the context of immigration satisfy equal protection if they are rationally related to a legitimate government purpose).

Classifications based on income and wealth are subject to rational basis scrutiny. *See Harris v. McRae,* 448 U.S. 297, 326 (1980); *Maher v. Roe,* 432 U.S. 464, 470-471 (1977). Under rational basis scrutiny, a statute is "accorded a strong presumption of validity" and will be upheld if "any reasonably conceivable state of facts" could demonstrate that the statute is "rationally related to a legitimate government purpose." *Heller,* 509 U.S. at 319-20. However, while such classifications are not automatically suspect, they have a measure of special constitutional significance. *See McDonald v. Board of Election Comm'rs of Chicago,* 394 U.S. 802, 807 (1969) (careful examination is especially warranted where lines are drawn on the basis of wealth); *Harper v. Virginia Bd. of Elections,* 383 U.S. 663, 668 (1966) (lines drawn on the basis of wealth are traditionally disfavored). As such, the Court has repeatedly invalidated statutes, on their face or as applied, that discriminated against the poor. *See Little v. Streater,* 452 U.S. 1 (1981);

Bullock v. Carter, 405 U.S. 134, 144 (1972); *Harper v. Virginia Bd. of Elections, supra*; *Griffin v. Illinois,* 351 U.S. 12, 17, n. 11 (1956).

In the present case, the Board's interpretation of section 212(c) of the Act, 8 U.S.C. § 1182(c), and the Ninth Circuit's affirmance, impermissibly discriminates among alien defendants based on their wealth, i.e., their financial ability to post bail.[6] However, no legitimate, bona fide or rational reason exists for treating aliens unable to post bail more harshly than those aliens released on bail. *See Wauchope v. U.S. Dept. of State*, 985 F.2d 1407 (9th Cir. 1993) (avoiding dual citizenship was not facially legitimate and bona fide reason to justify gender based distinction conferring United States citizenship on foreign born offspring of United States citizen fathers, but not mothers); *Blake v. Carbone*, 489 F.3d 88 (2nd Cir. 2007) (lawful permanent residents are not provided equal treatment when their eligibility for relief under section 212(c) of the Act, 8 U.S.C. § 1182(c), turns on an irrational classification – whether the ground of deportation charged is also a ground of inadmissibility); *Francis, supra* (lawful permanent residents are not provided equal treatment when their eligibility for relief under section 212(c) of the Act, 8 U.S.C.

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[6] There is no evidence that would suggest that Petitioner would have served a term of imprisonment of at least five years had he been able to post bail. Any suggestion that Petitioner would have served a term of imprisonment of at least five years is pure speculation.

§ 1182(c), turns on an irrational classification – whether they traveled abroad recently). In fact, apart from the ability to post bail, there is no distinguishable characteristic between those aliens credited for time spent in pre-trial detention and those aliens not credited for time spent in pre-trial detention. Accordingly, the Board's decision and the Ninth Circuit's affirmance construes section 212(c) of the Act, 8 U.S.C. § 1182(c), in a manner that violates the equal protection clause of the Fifth Amendment.

CONCLUSION

For these reasons, the Court should grant the petition for a writ of certiorari and reverse the decision of the Ninth Circuit Court of Appeals.

DATED: October 1, 2008

Respectfully submitted,

BRIAN D. LERNER (#158536)

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Attorney for Petitioner

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR REYES FONTILEA, Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 04-73462 Agency No. A40-500-727 MEMORANDUM* (Filed Apr. 23, 2008)

On Petition for Review of an Order of the Board of Immigration Appeals

Argued and Submitted April 9, 2008
Pasadena, California

Before: CANBY, KLEINFELD, and BYBEE, Circuit Judges.

Arthur Reyes Fontilea appeals the BIA decision that found him ineligible for a waiver of inadmissibility under 8 U.S.C. § 1182(c) because he was convicted of an aggravated felony and served more than 5 years. We deny his petition.

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Konstantinova v. INS[1] is inapposite. *Konstantinova* involved an unopposed motion to remand, which we analogized to a stipulation to remand, and analyzed under 8 C.F.R. § 3.2(c)(1). By contrast, here, petitioner seeks to hold the Department of Homeland Security (DHS) to an unopposed motion for summary judgment. Motions for remand are provided for in the regulations, but our attention has not been directed to any statute, regulation, or other authority for motions for summary judgment before the DHS and in this procedural context.

Res judicata did not apply because the decision was not final before the BIA ruled.[2] The BIA properly reviewed the controlling question of law de novo.[3] We are unable to identify a violation by the BIA or DHS of the applicable rules that would entitle respondent to relief unless his pre-conviction time served did not count toward the five years.

The relevant language of the waiver of inadmissibility statute is that it "shall not apply to an alien who has been convicted of one of more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years."[4] We held in

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[1] 195 F.3d 528 (9th Cir. 1999).

[2] *See Valencia-Alvarez v. Gonzales*, 469 F.3d 1319, 1323-24 (9th Cir.2006).

[3] See 8 C.F.R. § 1003.1(d)(3)(ii).

[4] 8 U.S.C. § 1182(c), *repealed by* Pub.L. 104-208, Div. C, Title III, § 304(b), Sept. 30, 1996, 110 Stat. 3009-597.

Arreguin-Moreno v. Mukasey, that "when pretrial detention is credited against the sentence imposed upon conviction, the period of pretrial detention must be considered as confinement as a result of a conviction within the meaning of [8 U.S.C.] § 1101(f)(7)."[5] *Arreguin-Moreno* is controlling in the case at bar and requires that the credit for time spent in custody be considered as confinement as a result of his conviction.

Petition DENIED.

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[5] *Arreguin-Moreno v. Mukasey*, 511 F.3d 1229, 1233 (9th Cir. 2008).

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A40 500 727 – Los Angeles Date: JUN 14 2004

In re: ARTHUR REYES *FONTILEA*

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Daniel L. Kahn, Esquire

ON BEHALF OF DHS: Jeffrey C. Finnegan
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(2)(A)(iii), I&N act [8 U.S.C. § 1251(a)(2)(A)(iii)] – Convicted of aggravated felony

APPLICATION: Waiver of inadmissibility under section 212(c)

ORDER:

PER CURIAM. The Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) is appealing the Immigration Judge's July 23, 2002, decision granting the respondent a waiver of inadmissibility under former section 212(c) of the Act. The Immigration Judge found that

the respondent did not serve 5 years of imprisonment for his aggravated felony conviction and was, therefore, eligible for a section 212(c) waiver. On appeal, the DHS argues that the respondent *did* serve 5 years of imprisonment for his aggravated felony conviction. *See generally* DHS Appeal Brief. The DHS's appeal will be sustained.

The respondent was convicted of attempted murder in California on February 10, 1992, and was sentenced to serve 10 years imprisonment. Documentary evidence from the California Department of Corrections indicates that the respondent was imprisoned for his aggravated felony conviction from September 8, 1992, until April 30, 1996, (1,331 days) before being taken into custody by the DHS. *See* Exhibit R-4, California Department of Corrections, Chronological History. Furthermore, the respondent's sentencing document issued by the State of California indicates that he served 546 days of imprisonment *before* being convicted of attempted murder. *See* Exhibit R-4, Abstract of Judgment – Prison Commitment. The pre-conviction imprisonment of 546 days served by the respondent was credited toward his ultimate sentence. *Id.* Based on the documentary evidence in the record, the DHS argues that the respondent served more than 5 years (1,877 days) for his aggravated felony conviction. *See generally* DHS Appeal brief. We agree. The respondent's pre-conviction imprisonment is considered time served for purposes of calculating whether he served at least 5 years for his aggravated felony conviction.

On appeal, the respondent argues that he served less than 4 years of imprisonment for his aggravated felony conviction (September 8, 1992 – April 30, 1996). *See* Respondent's Appeal Brief at 4-7. The respondent asserts that the DHS is barred from arguing that his 546 days of pre-conviction imprisonment should apply to his total time served, because the DHS failed to raise this argument at an earlier point in the deportation proceedings. *See* Respondent's Appeal Brief at 4-7. We disagree. The total amount of time served by the respondent for his aggravated felony conviction is dispositive in determining whether he is statutorily eligible for a section 212(c) waiver. *See* 8 C.F.R. § 1212.3(f)(4). Accordingly, the doctrine of *res judicata* does not apply to the non-final prior orders issued by the Immigration Judge and the Board in this case.

Federal regulations indicate that an Immigration Judge shall deny a section 212(c) waiver application from an alien who has been convicted of an aggravated felony and has served a term of imprisonment of at least 5 years for such conviction. *See* 8 C.F.R. § 1212.3(f)(4). Based on the aforementioned discussion and documentary evidence in the record, we find that the respondent served more than 5 years of imprisonment for his aggravated felony conviction. As such, he is statutorily ineligible for a section 212(c) waiver.

Accordingly, in light of the foregoing discussion, the DHS's appeal is sustained and the Immigration Judge's grant of a section 212(c) waiver is vacated.

Inasmuch as the Immigration Judge found the respondent deportable as an aggravated felon, the respondent is ordered deported to the Philippines. *See Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 884 n. 10 (9th Cir. 2003)

/s/ Patricia A. Gale
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Los Angeles, California

File No.: A 40 500 727 July 23, 2002

In the Matter of	)	IN REOPENED
	)	REMANDED
ARTHUR REYES FONTILEA	)	DEPORTATION
Respondent	)	PROCEEDINGS

CHARGE: 241(a)(2)(III)(ii) of the Immigration and Nationality Act.

APPLICATIONS: Advanced permission to return to an unrelinquished domicile, form I-191 [212(c) relief].

ON BEHALF OF RESPONDENT:	ON BEHALF OF SERVICE:
Daniel L. Kahn P. O. Box 2732 Linwood, Washington 98036	Jeffrey Finnegan/ Scott Laurent Assistant District Counsel Los Angeles, California

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE DEPORTABILITY/ FORMS OF DISCRETIONARY RELIEF

The respondent appeared before another Immigration Judge in 1996 and 1997. The original Immigration Judge took pleadings, and the respondent admitted all allegations, conceded deportability. Deportability is not an issue in this case. The respondent applied for

relief from deportation in the nature of application for advanced permission to return to an unrelinquished domicile at Exhibit 2. The respondent supplemented the record at Exhibits 3 and 4. The respondent also put in a pretrial brief at R-8.

The Court listened to the testimony from the respondent, but ruled in the oral decision, that was transcribed as part of this record that under the *Soriano* decision, the respondent is ineligible for relief because he is an aggravated felon, regardless of when his conviction took place. After the Immigration Judge made that decision, the prior Immigration Judge then continued to recite all the positive and negative factors in the analysis regarding his eligibility for 212(c) relief.

At the conclusion, the Immigration Judge denied the relief, and the respondent appealed. The decision from that Immigration Judge that was a summary of the oral decision that was transcribed, is marked in the record as R-1. The respondent appealed that decision at R-2. The Board of Immigration Appeals, on March 26, 2001, granted the respondent's request to remand this case for further hearing. Specifically the Board had ruled that the *Magana-Pizano* decision controlled and that the respondent should be given an opportunity to establish that he relied on making his plea agreement with the State authorities, and if so, that he would be eligible for relief under 212(c). It turned out that the *St. Cyr* decision superseded the *Magana-Pizano,* and the parties have agreed that the

reliance issue was mooted out by the *St. Cyr* decision. The Board decision is marked into the record as R-3.

The respondent then received briefs from the Service at collective Exhibit R-4. Also there was some evidence attached to the briefs. In essence, the Service was taking the position that the respondent was statutorily ineligible for relief. The Court had given a tentative ruling to the Service, and to respondent's counsel, that the respondent was statutorily eligible for 212(c) relief.

The respondent then submitted supplemental records to complete the record at R-5. There was additional criminal records at R-6. The respondent then brought in additional good conduct letters and other letters at R-7. The respondent also testified in behalf of his own application, and there was an offer of proof by the respondent's attorney, regarding the respondent's mother, which the Service accepted.

This Court is mindful of several decisions that control a 212(c) application and its adjudication. The leading case is *Matter of Marin,* 16 I&N Dec. 581 (BIA 1978). The Board of Immigration Appeals, in *Matter of Marin,* clearly articulated what should be considered in the adjudication of a 212(c) application. According to *Marin, supra,* as the negative factors grow more serious, it becomes incumbent upon the respondent to introduce additional offsetting favorable factors, which, in some cases, may have to involve unusual or outstanding equities.

Furthermore, with respect to the rehabilitation issue, respondent, who has a criminal record, would ordinarily be required to present evidence of rehabilitation before relief is granted, as a matter of discretion. In the final analysis though, the respondent must win on the issue of discretion.

Before discussing the issue of discretion and eligibility, certain issues have been agreed to by the parties, and this Court believes that they should be resolved initially. As I indicated earlier in this decision, the respondent's case was remanded to this Court to allow the respondent to establish reliance. *St. Cyr* was issued by the Supreme Court subsequent to the *Magana-Pizano* case, and it clearly superseded that case on this issue. Both parties agree that the respondent need not show reliance to be successful on a 212(c) application.

The second issue that was raised by the Service, at one time, and then they receded from it was whether or not the respondent had seven years of residency before the criminal act, to be eligible for 212(c) relief at all. The Service has withdrawn from their position, and the case law has clearly stated that 212(c) is an application of continuing nature, and that there is no cutoff of this 212(c) application by the criminal conduct, unlike cancellation of removal under 240A(a) cases. Both sides agree to this issue as well.

The third issue that will be discussed briefly herein, is the issue of discretion. The respondent has

testified candidly, both at the original hearing and today. Both sides have allowed this Court to incorporate, by reference, not only the Exhibits, but the testimony from the original hearing. In combination with the old hearing, plus the testimony from this hearing, plus the good conduct letters and testimony from the respondent, the Service agreed, but for statutory eligibility on another issue, the issue of discretion should be in favor of the respondent. This Court does not disagree. Because both parties agree, this Court will not develop this issue any further at this time.

It was also agreed that the evidence from the original hearing, which the Board had, would be marked into the record and used in this particular hearing. Those include Exhibit 1, which is the OSC, and the application at Exhibit 2, and supporting documents at 3 and 4. There was also a prehearing memorandum submitted by respondent's counsel at R-8.

On the basis of these agreements, this Court looked at interim decision 3327, and it is clear that the Board of Immigration Appeals has stated, where the parties agree to a particular issue, and this Court does not believe that it is an err in law, that this Court should pay particular attention to those agreements. In this case, the parties agree to all of the above issues as recited, and this Court does not disagree on any of them, and, therefore, the respondent should be eligible, and should be granted 212(c) relief in the exercise of discretion.

That leaves the remaining issue that the Service has raised, after the remand of this case. A brief history of this case must be put forth so that it can be clear how this Court is ruling on this statutory issue. In brief, the Service believes that the respondent has served over five years in jail, and, therefore, he is statutorily ineligible for 212(c) relief. The gravamen of their claim is, basically while the respondent was in custody, before his plea, that that time should be tacked on to any time that he served after he pled guilty to the criminal charges. If that theory holds, then the respondent would have served over five years, and according to the Service position, it would be five years and about 50 days, according to their memorandum at R-4. This Court disagrees, and several other Courts before it have also disagreed with this conclusion. I might add at the beginning, that the service has presented no case whatsoever that time waiting a hearing, and/or plea agreement should be tacked on to time served after the plea was entered. The Service has had more than adequate time to brief that issue, and, in fact, the Court gave a tentative ruling to the Service, and they came back with no case whatsoever to lead this Court in the direction that they so choose.

Turning to the basic facts in this case, the issue of the five year sentence was originally discussed in the bond hearing. Because bond hearings are separate, I do not believe that they are controlling in and of themselves. However, as far back as 1996 and 1997, when counsel for the respondent put on the

table about the five year sentence, the Service was fully put on notice that this was an issue. The memorandum, or prehearing letter from counsel confirmed what had happened in the bond hearings that the five year issue should not preclude the respondent from 212(c) relief, and his memorandum, which is part of the record, is marked at R-8. The Service was certainly on notice that this issue existed as far back as the bond hearing, and then again before hearing.

Furthermore, when the Court reviewed this case finally in this Court, on July 23, 2002, it was clear that the Service did have certified criminal records dating back to May of 1996. Because of the way the prior Immigration Judge handled this case, those documents were never introduced into the record, although they were part of the INS collection of documents.

Furthermore, in reviewing the prior Immigration Judge's decision, it is clear that that Judge, in her oral decision, actually raised the issue about five years custody. At page three, the prior Immigration Judge said "since the incident, the respondent has served time in prison, less than five years. As a result of the conviction, though, he was in jail for sometime prior to the conviction. The actual sentence was ten years, but he only served four years." This notice, to the trial attorney at that time compounds what the Service already knew about the facts in this case. There was no question nor misunderstanding, in this Court's mind, that the Service was fully aware of all the facts and all the issues presented with regard to

the original 212(c) application. Notwithstanding the knowledge of these facts, the Service did not preserve the issue of the five years at the time of the original hearing. In fact, the Service waived appeal notwithstanding the Judge's conclusion, in the oral decision, that the respondent had only served four years.

Notwithstanding this approach, the respondent filed a motion to remand to the Board of Immigration Appeals. At that time, the record is devoid of any opposition to the respondent's 212(c) application. At R-3, the Board writes, at page one, at the time the respondent appealed, the respondent was otherwise eligible for such discretionary relief, but for the bar imposed on such relief by AEDPA for the commission of an aggravated felon. *See generally Matter of Davis,* Int. Dec. 3439 (BIA 2000). To recap, the Board had made a decision, and the Service, with full information, and exploration of the five year issue, did not oppose the motion to remand, nor did they appeal the remand itself. The Immigration and Naturalization Service stood silent and let this case come to hearing.

In final argument, the Service presented its belief that the respondent is statutorily ineligible for this relief because the respondent was sentenced to five years, based on their theory as I discussed, *supra.* The record is complete in that this Court is fully satisfied that this issue has been resolved, not only by the Board of Immigration Appeals, but actually by two prior Immigration Judges, one in 1997, when the original decision was rendered. And by that prior Immigration Judge who changed venue as well.

All Judges and the Board of Immigration Appeals certainly could have made other decisions, but they did not.

This Court is fully satisfied that the principles of res judicata apply to the Service, and, therefore, the respondent should not be prejudice or precluded from moving forward with the 212(c) application under these circumstances. Furthermore, in the alternative, since the Service could not produce one precedent decision that the time served by the respondent awaiting a hearing should be tacked onto the actual time served, this Court cannot find, as a matter of the law, that the Service's theory is correct or agrees with it.

In the final analysis, this Court finds it extremely disturbing, under this particular factual pattern, that the Service, after more than five years of litigation, takes the position that this respondent is now statutorily ineligible, after the conduct of the Service during many, many hearings and decisions before this Court reaches its final decision.

In the final analysis, the respondent is statutorily eligible for 212(c) relief. He is certainly eligible for this relief in the exercise of discretion.

ORDER

IT IS HEREBY ORDERED that the respondent's application for 212(c) relief be granted, and these proceedings be terminated.

/s/ Ira E. Bank
IRA E. BANK
Immigration Judge

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A40 500 727 – Los Angeles Date: MAR 26 2001

In re: ARTHUR REYES *FONTILEA*

IN DEPORTATION PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT:
Daniel L. Kahn, Esquire

ON BEHALF OF SERVICE:
Revathi Muneer
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1251(a)(2)(A)(iii)] – Convicted of aggravated felony

APPLICATION: Remand; waiver of inadmissibility

This deportation case arises in the Ninth Circuit and involves a respondent who was convicted of an aggravated felony, pursuant to a plea of guilty/nolo contendere, prior to the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 ("AEDPA"). At the hearing, the respondent filed an application for a waiver of inadmissibility under section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c). At

the time the respondent appealed, the respondent was otherwise eligible for such discretionary relief but for the bar imposed on such relief by AEDPA for the commission of an aggravated felony. *See generally Matter of Davis*, Interim Decision 3439 (BIA 2000).

Subsequent to the Immigration Judge hearing and the respondent's appeal, the United States Court of Appeals for the Ninth Circuit issued a decision on December 27, 1999, holding that AEDPA § 440(d)'s bar of discretionary relief afforded by INA § 212(c) should not apply to aliens whose deportation proceedings were pending when AEDPA became law[1] or who can demonstrate that they entered guilty or nolo contendere pleas in reliance upon the relief afforded by INA § 212(c). *Magana-Pizano v. INS*, 200 F.3d 603, 613-14 (9th Cir. 1999) ("[W]e leave open the possibility that, under a specific factual showing that a plea was entered in reliance on the availability of discretionary waiver under § 212(c), a petitioner may be able to establish that AEDPA § 440(d) has an impermissible retroactive application as to him."). *See also Mattis v. Reno*, 212 F.3d 31, 36 (1st Cir. 2000) (holding that AEDPA § 440(d) would have a

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[1] With regard to the respondent's motion to remand, we note that the respondent's deportation proceedings were not pending when AEDPA was enacted on April 24, 1996. Although the Order to Show Cause (Form I-221) was issued on July 19, 1995, the respondent was not served with the Order to Show Cause until April 30, 1996, and the Order to Show Cause was not filed with the Immigration Court until May 8, 1996. Thus, the motion to remand is denied.

retroactive effect if applied to aliens who pled to or did not contest criminal charges in actual and reasonable reliance on the availability of § 212(c) relief).

Under these circumstances, this case is remanded to the Immigration Judge to provide the respondent an opportunity to establish that the respondent actually and specifically relied upon the availability of section 212(c) discretionary relief at the time the plea was entered. If such specific reliance is established, the respondent will be entitled to a hearing on the merits of an application for a waiver under section 212(c), at which the respondent must demonstrate that the relief is warranted as a matter of discretion. Accordingly, the following order will be issued.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

/s/ Edward R. Grant
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Los Angeles, California

File No.: A 40 500 727 May 15, 1997

In the Matter of	)	
	)	IN DEPORTATION
ARTHUR REYES FONTILEA	)	PROCEEDINGS
Respondent	)	

CHARGE: Section 241(a)(2)(III) of the Immigration and Nationality Act, as having been convicted of an aggravated felony.

APPLICATIONS: Section 212(c) – waiver.

ON BEHALF OF RESPONDENT:	ON BEHALF OF SERVICE:
Daniel Kahn	Tammy Evans

ORAL DECISION OF
THE IMMIGRATION JUDGE

The respondent is a male, native and citizen of the Philippines, who was admitted to the United States on July 5, 1986, as an immigrant. Proceedings were instituted with the respondent in an Order to Show Cause dated July 19, 1995, alleging that the respondent is an aggravated felon pursuant to Section 241(a)(2)(A)(III) as an aggravated felon. This has been made a part of the record as Exhibit 1. Subsequent to the Order to Show Cause, the Immigration

and Nationality Act was amended by the Anti-terrorist Act, referred to AEDPA, which barred relief for aggravated felons under 212(c) of the Immigration Act. The respondent filed an application for 212(c) relief on May 17, 1995. At issue here, is whether or not the respondent is eligible for relief pursuant to 212(c) of the Immigration Act, for a conviction which occurred prior to the passage of the AEDPA. This is an issue which has been presented to the Board of Immigration Appeals, and was decided in a case called *Soriano,* which was certified to the Attorney General. In the decision that the Board issued, they held that 212(c) relief was available to persons whose proceedings had commenced prior to the Anti-terrorism and Effective Death Penalty Act of 1996. Subsequently, in a decision by the Attorney General, she issued a decision holding that it was not available to persons whose convictions were aggravated felonies, regardless of when the conviction took place, on, before or after enactment of AEDPA. That issue may or may not be resolved differently at a later time. The Court is aware that there are appeals pending, at least in the Ninth Circuit, with regard to the retroactive effect of AEDPA. However, this Court is bound to follow the decision which is presently still case law. Under the *Soriano* decision, respondent is ineligible for relief because he is an aggravated felon, regardless of when his conviction took place.

The respondent has testified here today, and so has his father. The respondent entered the United States when he was fifteen years of age, graduated

from high school, and had no problems in the United States or in the Philippines, until one fateful night. He took a ride with some friends and was involved in a drive-by shooting. The respondent admits that, prior to the incident, he was associated with a gang, though he denies having been a member in the formal sense. The night of the shooting, the respondent was driving a car in which rode two other passengers, one of which pulled a gun and shot out the window while the respondent was driving. Respondent recognizes that it was a mistake; that he should not have been involved and persuaded to do this, however, he does recognize that he is responsible. At that incident, another young man was shot twice, at least that the respondent knows of. The respondent does not know precisely what injuries were sustained, other than a back injury, though he has heard that the victim is "alright." There is no evidence of this at this time. Since the incident, the respondent has served time in prison, less than five years, as a result of the conviction, though he was in jail sometime prior to the conviction. The actual sentence was ten years, but he only served four years. In prison, he was exemplary, he did work which was considered a privilege as being an administrator of assistant to the warden, and other job assignments which are given to exemplary inmates. He refused to participate in a gang when he was in prison, refused to have any tatoos when he was in prison, attended classes, and basically did very well. The respondent has two parents in the United States. His father is a United States citizen since approximately 1985. His mother just

recently became a United States citizen. He has two brothers, and one sister. One brother is in the navy, one brother, who was in the coast guard is deceased, and was shot while on active duty, though at this time nobody seems to know who perpetrated that crime.

The respondent is presently attending school at the Devry (phonetic sp.) Institute and wants to study electronics, and anticipates graduating in February of 1998. He has participated, since his release from prison, in community activities, including a heart walk in 1997, multiple sclerosis events, with the permission of his parole officer, because it required him to leave his area of supervision. He is a faculty assistant at the college he attends and he has been on the dean's list. Additionally, he volunteers and helps other college students become oriented in joining in their academic involvement.

The respondent testified credibly, almost to his own detriment when he admitted drug use. However, I will take that as speaking favorably for his credibility. He admitted some use of marijuana as recently as 1995 in prison. There is no evidence of any public assistance other than $30 to $50, which he was given by his parole officer, when he was released from prison.

The respondent's father testified that he, the father, worked for the United States Government in the Philippines, and was given an immigrant visa and came to the United States. While working in the

Philippines he was a carpenter, that was the work he performed for the United States Government. The father testified that he was unaware of any gang activity until the son was arrested by the police. That the son had never give him, the father, any problems before that incident. The father testified as to the arrest, although the father did not have much information as to why the son was arrested. At that time he did not know. At the present time, the son is an active member of the family. They spend time together and the father testified that he knows that the son is involved in volunteer activities.

As stated before, this Court has no jurisdiction to grant the relief from deportation in the form of 212(c) waiver, and, therefore, cannot grant that and must enter an order of deportation. The Court will say that it is a very shocking crime that I most probably would have wanted more testimony, but because we have really no issue other than deportability to resolve, I see no reason to pursue it. I am persuaded that the respondent is genuinely sorry for his crime. I am persuaded that the respondent is making efforts to rehabilitate himself. I am persuaded that he comes from a close knit family, and that his parents have suffered, and that they care very much for their son. However, at this time, I cannot say that I would favorably exercise discretion, though I will say that I would hear more testimony, and at least be willing to entertain that decision if it comes back to me.

ORDER

IT IS ORDERED that the respondent's application for 212(c) relief is denied, and the respondent is ineligible for relief.

IT IS FURTHER ORDERED that the respondent will be deported to his native country of the Philippines.

Date: May 15, 1997

LORRAINE MUNOZ
Immigration Judge

U.S. DEPARTMENT
OF JUSTICE
Immigration and
Naturalization Service

Order to Show Cause
and Notice of Hearing

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

In Deportation Proceedings under section 242 of the Immigration and Nationality Act.

United States of America: **File No.** A40 500 727

Dated: July 19, 1995

In the matter of FONTILEA, Arthur Reyes (Respondent)

Address: c/o California Department of Corrections

Telephone No.
(Area Code) NONE

Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1) You are not a citizen or national of the United States;

2) You are a native of Phillippines and a citizen of Phillippines;

3) You entered the United States at or near Los Angeles, CA on or about July 5, 1986;

4) You were then admitted as an immigrant;

5) You were on February 10, 1992, convicted in the Superior Court of California, County of Los Angeles, of the offense of ATTEMPTED MURDER,

committed on or about September 24, 1990, in violation of Section 664/187 of the California Penal Code;

6) For this conviction, you were sentenced to confinement for a period of 10 years.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provisions of law:

Section 241(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended in that, at any time after entry, you have been convicted of an aggravated felony as defined in Section 101(a)(43) of the Act.

WHEREFORE, YOU ARE ORDERED to appear for a hearing before an Immigration Judge of the Executive Office for Immigration Review of the United States Department of Justice at:

TO BE CALENDERED AND NOTICE PROVIDED BY THE OFFICE OF THE IMMIGRATION JUDGE.

Address: Notice will be mailed to the address provided by the respondent.

ON: _____ AT: _____ M

and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: July 19, 1995

Signature of Issuing Officer /s/ Kim Porter
KIM W. PORTER

City and State of Issuance: San Diego, CA

Title of Issuing Officer: ASSISTANT DISTRICT DIRECTOR

This Order to Show Cause shall be filed with the Immigration Judge of the Executive Office for Immigration Review at the address provided below. You must report any changes of your address or telephone number in writing to this office:

The Office of the Immigration Judge
First National Bank Building
401 West "A" Street, Suite 800
San Diego, CA 92101

Certificate of Translation and Oral Notice

This Order to Show Cause ☐ **was** ☒ **was not** read to the named alien in the ~~Spanish~~ English language, which is his/her native language or a language which he/she understands.

Date Signature Printed Name and Title of Translator

Address of Translator (if other than INS employee) or office location and division (if INS employee)

Translation read by alien
(If oral notice was not provided please explain)

Manner of Service	Alien's Right Thumb Print
☒ Personal Service to Alien ☐ Certified Mail – Return Receipt Requested ☒ Alien ☐ Counsel of Record	[Thumb Print Omitted In Printing]

Certificate of Service

This Order to Show Cause was served by me at San Diego, CA on 4/30 1996 at 7:00 A.m.

/s/ E. Jackson — E. Jackson,
Officer's Signature — Printed Name

Detention Enforcement Officer, — SND/DCF
Title — Office

/s/ Arthur Fontilea
Alien's Signature (acknowledgment/receipt of this form)

Request for Prompt Hearing and Waiver of 14-Day Minimum Period

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To expedite determination of my case, I request an immediate hearing, and waive my right to the 14 day notice.

/s/ Arthur Fontilea — 4/30/96
Signature of Respondent — Date

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARTHUR REYES FONTILEA, Petitioner, v. MICHAEL B. MUKASEY, Attorney General, Respondent.	No. 04-73462 Agency No. A40-500-727 ORDER (Filed Jul. 3, 2008)

Before: CANBY, KLEINFELD, and BYBEE, Circuit Judges.

Judges Kleinfeld and Bybee have voted to deny the petition for rehearing en banc, and Judge Canby has recommended the same.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing en banc is DENIED.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date	April 19, 1992	Dept. SCB	
Honorable:	Victoria Chavez Judge	M Johnson	Deputy Clerk
	J Grulkowski Deputy Sheriff	D. Gormley	Reporter

(Parties and counsel checked if present)

CASE NO.	TA009295	Counsel for People:
CHARGE	PEOPLE OF THE STATE OF CALIFORNIA VS 04 FONTILEA ARTHUR REYES 182.1 02CTS 664/187.A 02CTS	DEPUTY DISTRICT ATTY: D. Deherjian Counsel for Defendant: J LAUCHENGCO PVT x 1419609 (BOX CHECKED IF ORDER APPLICABLE)

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Nature of Proceedings REM 2233953 1-25-92

71 ☐ P&S is sworn as the english/_____ interpreter
☐ public defender appointed, d.p.d. _____ ☐ oath filed per section 68580 government code
☐ due to conflict of interests, public defender relieved, pursuant to penal code section 987.2/government code section 31000 alternate defense counsel _____ is appointed.
72 ☐ criminal proceedings adjourned/resumed.
73 ☐ defendant ordered delivered to department of corrections per section 1203.03 penal code

74 ☐ on _____ motion, probation and sentence hearing/further proceedings continued to _____ at _____ a.m. in dept. _____ ☐ supplemental probation report/progress report ordered
75 ☐ defendant personally and all counsel waive time for sentencing. ☐ defendant ordered to return.

76 ☒ __probation denied/~~proceedings suspended~~/sentence imposed as follows:
☒ imprisoned in state prison for ☐ term prescribed by law ☒ total of 10 years 0 months
☒ court selects the high term of 9 years/~~months~~ for the base term as to count 3
☒ plus 1 years/~~months~~ pursuant to section 12022(A)(1) of the penal code
☐ plus _____ as indicated below
☐ committed to california youth authority, the term of imprisonment to which the defendant would have been sentenced pursuant to section 1170 penal code is __ years
☐ imprisoned in los angeles county jail for term of __ days
☐ fined in sum of $_____ plus additional fine of $_____ (11372.6 health & safety code) for a total fine of $_____ plus $_____ assessment and surcharge (1484 PG & 76000GC), to be paid to county clerk. ☒ pay restitution fine in sum of $100.00 pursuant to section 1396 government code payable to restitution fund
77 ☐ sentence is suspended.
78 ☐ probation granted for a period of __ years ☐ __ probation to be without formal supervision.
79 ☐ diversion granted per section 1000.1 penal code for period of __ years/months
☐ defendant personally and all counsel waive time for trial
: ☐ ___ spend first _____ days in county jail ☐ road camp or honor farm recommended
☐ work furlough program recommended. ☐ not to be eligible for county parole
2 ☐ fined in sum of $_____ plus additional fine of $_____ (11372.5 health & safety code) for a total fine of $_____ plus $_____ assessment and surcharge (1464 PC & 76000GC), to be paid to probation officer in such manner as he shall prescribe.
3 ☐ make restitution of $_____ to the victim/restitution fund pursuant to section 1203.04 penal code in such manner as the probation officer shall prescribe. ☐ total amount of restitution to include _____ % service charge as authorized by section 1203.1 PC
☐ pay restitution fine in sum of $____ pursuant to section 138967(a) government code payable to probation department in such manner as they prescribe. ☐ said fine to be stayed while defendant pays restitution and if restitution is paid in full stay shall be permanent
4 ☐ ___ minimum payment of fine/restitution to be $_____
5 ☐ ___ not drink any alcoholic beverage and stay out of places where they are the chief item of sale
6 ☐ not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia except with valid prescription, and stay away from places where users congregate.
7 ☐ ___ not associate with persons known by you to be narcotic or drug users or sellers
8 ☐ submit to periodic anti-narcotic tests as directed by the probation officer such testing to be suspended while the defendant is in custody, is hospitalized, or is in a residential drug treatment program approved by probation officer.
9 ☐ ___ have no blank checks in possession, not write any portion of any checks not have bank account upon which you may draw checks.
10 ☐ not gamble or engage in bookmaking activities or have paraphernalia thereof in possession, and not be present in places where gambling or bookmaking is conducted.
11 ☐ ___ not associate with _____

12 ☐ cooperate with probation officer in a plan for _____

13 ☐ support defendants as directed by probation officer.

14 ☐ seek and maintain training, schooling or employment as approved by probation officer.

15 ☐ ___ maintain residence as approved by probation officer _____

16 ☐ surrender driver's license to clerk of court to be returned to department of motor vehicles

17 ☐ ___ not drive a motor vehicle unless lawfully licensed and insured.

18 ☐ not own, use or possess any dangerous or deadly weapons.

19 ☐ ___ submit person and property to search or seizure at any time of the day or night by any law enforcement officer with or without a warrant.

20 ☐ obey all laws, orders, rules and regulations of the probation department and of the court.

---

80 ☒ defendant given total credit for 819 days in custody. (546 days actual custody and 275 days good time/work

81 ☒ ___ ~~sentence/counts to run consecutively to/concurrently with~~ _____

82 ☐ stay of execution of _____ Granted to _____

---

83 ☒ ___ on motion of people counts 1 and 2 and decision of allegations dismissed in furtherance of [illegible]

84 ☐ court advises defendant of his appeal/parole rights.

85 ☐ ___ "notice re certificate of rehabilitation and pardon" given to defendant.

86 ☐ defendant to pay costs of probation services in amount of $_____

87 ☐ ___ court finds that defendant does not have the present ability to pay costs of incarceration/legal services rendered/probation services rendered.

88 ☐ defendant is referred to treasurer/tax collector for financial evaluation.

89 ☒ ___ further order as follows/additional conditions of probation:

The Court recommends housing of this defendant at California Youth Authority pursuant to Section 1731.5(c) Welfare and Institutions Code

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90 ☐ ___ sheriff is ordered to allow defendant _____ phone calls at defendants own expense.

91 ☐ defendant fails to appear with/without sufficient excuse.

92 ☐ bail if posted, forfeited/or revoked, bench warrant ordered issued/reissued and held until _____
☐ no bail/uail fixed at $_____.

93 ☐ defendant appearing bench warrant ordered recalled/quashed ☐ recall no. _____ written ☐ abstract filed.

☒ REMANDED ☐ BAIL ☐ BAIL EXON. ☐ BOND NO. _____

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ ON PROBATION

☐ BENCH WARRANT ☐ IN CUSTODY OTHER MATTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date	March 26, 1992		Dept. SCG		
Honorable	Victoria Chavez	Judge	M Johnson	Deputy Clerk	
	J Grulkowski	Deputy Sheriff	B Morgan	Reporter	

(Parties and counsel checked if present)

CASE NO.	TA009295-04	Counsel for People:
CHARGE	PEOPLE OF THE STATE OF CALIFORNIA VS 04 FONTILEA ARTHUR REYES 182.1 02CTS 664 187.A 02CTS	DEPUTY DISTRICT ATTY: E. Hunter Counsel for Defendant: J LAUCHENGCO PVT x _____ (BOX CHECKED IF ORDER APPLICABLE)

Nature of Proceedings REM 2233953 1-25-92

71 ☐ P&S is sworn as the english/_____ interpreter
☐ public defender appointed, d.p.d. _____ ☐ oath filed per section 68580 government code
☐ ___ due to conflict of interests, public defender relieved, pursuant to penal code section 987.2/government code section 31000 alternate defense counsel _____ is appointed.

72 ☐ ___ criminal proceedings adjourned/resumed.

73 ☐ defendant ordered delivered to department of corrections per section 1203.03 penal code

74 ☐ on defendant's motion, probation and sentence hearing/further proceedings continued to 4-9-92 at 8:30 a.m. in dept. SC B ☐ supplemental probation report/progress report ordered

75 ☐ defendant personally and all counsel waive time for sentencing. ☒ defendant ordered to return.

76 ☐ ___ probation denied/proceedings suspended/sentence imposed as follows:
☐ imprisoned in state prison for ☐ term prescribed by law ☐ total of __ years __ months
☐ court selects the ____ term of __ years/months for the base term as to count ___
☐ plus __ years/months pursuant to section _____ of the _____ code
☐ plus _____ as indicated below
☐ committed to california youth authority, the term of imprisonment to which the defendant would have been sentenced pursuant to section 1170 penal code is __ years
☐ imprisoned in los angeles county jail for term of __ days
☐ fined in sum of $_____ plus additional fine of $_____ (11372.6 health & safety code) for a total fine of $_____ plus $_____ assessment and surcharge (1484 PG &76000GC) to be paid to county clerk. ☐ pay restitution fine in sum of $____ pursuant to section 1396 government code payable to restitution fund

77 ☐ sentence is suspended.

78 ☐ probation granted for a period of ___ years ☐ ___ probation to be without formal supervision.

79 ☐ diversion granted per section 1000.1 penal code for period of __ years/months
☐ defendant personally and all counsel waive time for trial

1 ☐ ___ spend first _____ days in county jail ☐ road camp or honor farm recommended ☐ work furlough program recommended. ☐ not to be eligible for county parole

2 ☐ fined in sum of $_____ plus additional fine of $_____ (11272.5 health & safety code) for a total fine of $_____ plus $_____ assessment and surcharge (1464 PC & 76000GC), to be paid to probation officer in such manner as he shall prescribe.

3 ☐ make restitution of $_____ to the victim/restitution fund pursuant to section 1203.04 penal code in such manner as the probation officer shall prescribe. ☐ total amount of restitution to include _____ % service charge as authorized by section 1203.1 PC
☐ pay restitution fine in sum of $____ pursuant to section 138967(a) government code payable to probation department in such manner as they prescribe. ☐ said fine to be stayed while defendant pays restitution and if restitution is paid in full stay shall be permanent

4 ☐ ___ minimum payment of fine/restitution to be $_____

5 ☐ ___ not drink any alcoholic beverage and stay out of places where they are the chief item of sale

6 ☐ not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia except with valid prescription, and stay away from places where users congregate.

7 ☐ ___ not associate with persons known by you to be narcotic or drug users or sellers

8 ☐ submit to periodic anti-narcotic tests as directed by the probation officer such testing to be suspended while the defendant is in custody, is hospitalized, or is in a residential drug treatment program approved by probation officer.

9 ☐ ___ have no blank checks in possession, not write any portion of any checks not have bank account upon which you may draw checks.

10 ☐ not gamble or engage in bookmaking activities or have paraphernalia thereof in possession, and not be present in places where gambling or bookmaking is conducted.

11 ☐ ___ not associate with _____.

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12 ☐ cooperate with probation officer in a plan for _____

13 ☐ __ support defendants as directed by probation officer.

14 ☐ seek and maintain training, schooling or employment as approved by probation officer.

15 ☐ __ maintain residence as approved by probation officer _____

16 ☐ surrender driver's license to clerk of court to be returned to department of motor vehicles

17 ☐ __ not drive a motor vehicle unless lawfully licensed and insured.

18 ☐ not own, use or possess any dangerous or deadly weapons.

19 ☐ __ submit person and property to search or seizure at any time of the day or night by any law enforcement officer with or without a warrant.

20 ☐ obey all laws, orders, rules and regulations of the probation department and of the court.

---

80 ☐ defendant given total credit for __ days in custody. (__ days actual custody and __ days good time/work

81 ☐ __ sentence/counts to run consecutively to/concurrently with _____

82 ☐ stay of execution of _____ Granted to _____

---

83 ☐ __ on motion of people counts _____ dismissed in furtherance of justice

84 ☐ court advises defendant of his appeal/parole rights.

85 ☐ __ "notice re certificate of rehabilitation and pardon" given to defendant.

86 ☐ defendant to pay costs of probation services in amount of $_____

87 ☐ __ court finds that defendant does not have the present ability to pay costs of incarceration/legal services rendered/probation services rendered.

88 ☐ defendant is referred to treasurer/tax collector for financial evaluation.

89 ☐ __ further order as follows/additional conditions of probation:

_____

☒ Defendant's motion to withdraw plea of guilty is argued and denied.

_____

_____

_____

---

90 ☐ __ sheriff is ordered to allow defendant _____ phone calls at defendants own expense.

91 ☐ defendant fails to appear with/without sufficient excuse.

92 ☐ bail if posted, forfeited/or revoked, bench warrant ordered issued/reissued and held until _____
☐ no bail/bail fixed at $_____.

93 ☐ defendant appearing bench warrant ordered recalled/quashed ☐ recall no. _____ written ☐ abstract filed.

☒ REMANDED ☐ BAIL ☐ BAIL EXON. ☐ BOND NO. _____

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ ON PROBATION

☐ BENCH WARRANT ☐ IN CUSTODY OTHER MATTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date	February 10, 1992		Dept. SCG
HONORABLE	Victoria Chavez JUDGE	G. DICKEY	Deputy Clerk
	J Grulkowski Deputy Sheriff	M. BARRIOS	Reporter

(Parties and counsel checked if present)

CASE NO.	TA009295-04	Counsel for People:	
CHARGE	PEOPLE OF THE STATE OF CALIFORNIA VS 04-FONTILEA ARTHUR REYES 182.1 02CTS: 664/187.A 02CTS	DEPUTY DISTRICT ATTY:	E. Hunter
		Counsel for Defendant:	D. XXXX FACTOR, 987.2
		x _____ (BOX CHECKED IF ORDER APPLICABLE)	

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Nature of Proceedings 1538.5 MOTION/402 MOTION/TRL 1/30 REM 1-25-92

☐ _____ is sworn as the english/_____ interpreter

☐ oath filed per section 68580 government code.

☐ ___ due to conflict of interest, public defender relieved, pursuant to penal code section 987.2/government code section alternate defense counsel _____ is appointed.

☐ ___ on people's motion, amendment to/amended information filed/deemed filed/information amended by interlineation/as follows _____

☐ arraigned, pleads not guilty, admits/denies/allegation(s).

☐ ___ on ____ motion case a ____ consolidated into case a ____ as count(s) ____ thereof, see case a ____ for further proceedings, motion pursuant to section 985 penal code ___ granted/denied/withdrawn/continued to ____

☐ the court states it has read and considered the transcript of the preliminary hearing.

☐ ___ motion pursuant to section 1538.5 penal code called for hearing ☐ motion submitted per stipulation 41 below.

☐ ___ cause is called for trial. ☐ cause submitted per stipulation 41 below.

☒ defendant personally and all counsel waive trial by jury and court court accepts waiver(s).

41 ☐ By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings, with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hearing are received in evidence and marked for identification in these proceedings, bearing the same number assigned in the preliminary hearing, subject to this court's rulings. People's exhibit _____ (Preliminary Transcript) admitted into evidence by reference _____

42 ☒ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waives privilege against self-incrimination. Defendant advised of possible effects of plea on any alien/citizenship/probation/parole status

☒ Motion pursuant to section 1538.5 Penal code resumes from February 7, 1992 Arthur Fontilea and Randy Seymour are sworn and testify. XXX Peoples exhibit A (copy of statement of Arthur Fontilea) is admitted into evidence.

☐ ___ all sides rest. counsel waive argument/argue and cause is submitted.

☒ motion pursuant to section 1538.5 penal code ~~granted~~/denied/~~withdrawn/continued to~~

☐ ___ court finds defendant not guilty _____

☐ court finds defendant guilty as charged to section(s) _____ in counts(s) _____ ☐ lesser included/related offense.

☐ ___ pre-trial conference/trial setting held/off calendar/continued to ____ at ___ dept. ____

☐ ☐ the defendant ☐ the people announce(s) ready for trial.

☐ ___ on people's/defendant's/court's motion, trial/motion(s) is set/continued to/remains/trailed too ____ at ___ a.m. in dept. ____ reason ____

☐ further continuances will not be granted.

☐ ___ defendant personally and all counsel waive time for trial plus _____ days

☐ cause transferred to dept ____ ☐ forthwith ☐ on _____ at ___ a.m. for ____

☐ ___ defendant/witness(es) ordered to return on above date: _____

☐ defendant advised of constitutional rights and effect of prior convictions; waives rights; admits prior(s) no. _____

☒ defendant personally withdraws plea of not guilty to count(s) 3 rearraigned.

☒ ___pleads guilty/~~nolo contendere~~, with consent of district attorney and approval of court to violation of section(s) 664/187.A in count(s) 3 & special allocations ☒ lesser included/ ~~related~~ offense

☒ probation and sentence hearing set 2-26-92 at 8:30 a.m. in department SCG including ☒ disposition of remaining count(s) 1&2 ☒ determination of allegations remaining

☐ defendant waives time for sentence ☐ requests immediate sentence (see below/attached sheet)

☒ defendant referred to probation department ☐ defendant waives probation referral

☒ further order as follows: _____

Defendants 402 motion is argued and denied.

☐ the sheriff is ordered to allow the defendant ____ telephone calls at defendant's own expense.

☐ defendant fails to appear with/without sufficient excuse.

☐ bail, if posted, forfeited/o.r. revoked, bench warrant ordered issued/reissued/and held until _____

☐ no bail ☐ bail fixed at $_____ ( ) warrant filed

☐ defendant appearing, bench warrant ordered recalled/quashed ( ) recall no _____ written ( ) abstract filed

☐ upon payment of $ ___ costs before ____ and filing of reassumption, order of ____ forfeiting bail is to be vacated and bail reinstated. ☐ certificate of mailing executed and filed/notice waived

☐ reassumption/filed costs paid (receipt no ____) order of ____ forfeiting bail vacated bail reinstated.

☐ ___defendant's motion for release on o.r./reduction of bail is granted/denied/set/continued to/_____ reason: _____

☐ bail reset at $_____

☒ REMANDED ☐ BAIL ☐ BAIL EXONERATED ☐ BOND NO. 4-19-57

☐ RELEASED ☐ O.R. ☐ O.R. DISCHARGED ☐ IN CUSTODY OTHER MATTER

STATE OF CALIFORNIA –
YOUTH AND ADULT
CORRECTIONAL AGENCY

PETE WILSON,
GOVERNOR

[LOGO]

DEPARTMENT OF CORRECTIONS
Parole & Community Services Division
2165 E. Spring St. – 3rd Floor
Long Beach, CA 90806
(310) 595-5932

August 24, 2001

U.S. Immigration and Naturalization Service

To Whom It May Concern:

Mr. Arthur Fontilea was sentenced to Ten (10) years prison on Case Number TA009295. He was delivered to one of the prison facilities on 9/8/92. Due to credits earned, he was released (after serving 4 years and 29 days) from prison on April 30, 1996.

I supervised Mr. Fontilea for a time period after he was released from prison in April of 1996.

Should you have any questions, please feel to contact me.

Sincerely,

/s/ Myra Graham
Myra Graham, Parole Agent II
Harbor Unit